



## CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Public Hearing to Consider Adopting an Uncodified Interim Urgency Ordinance Extending Interim Ordinance No. 1823, Imposing a Temporary Moratorium on the Establishment or Operation of Medical Marijuana Dispensaries

**MEETING DATE:** February 3, 2010

**PREPARED BY:** Deputy City Attorney

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**RECOMMENDED ACTION:** Adopt an uncodified interim urgency ordinance extending Interim Ordinance No. 1823, Imposing a Temporary Moratorium on the Establishment or Operation of Medical Marijuana Dispensaries.

**BACKGROUND INFORMATION:** On May 20, 2009, the Council adopted Interim Ordinance No. 1823 extending the moratorium on the establishment or operation of medical marijuana dispensaries within the City. The ordinance was adopted after staff received several inquiries from the public regarding the steps needed to open medical marijuana dispensaries in the City. The City's Municipal Code does not address the issue. Given undecided questions over the conflict between California and Federal marijuana laws, such dispensaries may or may not be a prohibited use within the City of Lodi.

Without further action, the existing moratorium is set to expire on April 14, 2010.

Currently there are several cases pending before the courts in California concerning the regulation of medicinal marijuana dispensaries. Of particular interest is the matter of the *Qualified Patients Assoc. v. City of Anaheim*. Staff anticipates that the Court of Appeal, 4<sup>th</sup> Appellate District, will rule on the *Anaheim* case within the next few months and believes the decision may affect the ability of cities to regulate the establishment of medical marijuana dispensaries within their jurisdictions. For that reason, staff recommends extending the existing temporary moratorium for a period of one year, through April 13, 2011. The continuation of the moratorium will allow staff to take the court decisions into consideration in analyzing how best to regulate dispensaries within the City.

Government Code Section 65858 provides that the Council may, after notice to the public pursuant to Government Code Section 65090 and a public hearing, extend Interim Ordinance No. 1823 for a period of one year. The extension requires a minimum four-fifths vote for adoption.

Continuing the moratorium does not preclude medical marijuana patients or their primary caregivers from associating in order to collectively or cooperatively cultivate marijuana for medical purposes as provided under existing California law (see Health & Safety Code Section 11362.775).

As proposed, the recommended extension of Interim Ordinance No. 1823 would extend the current moratorium on the issuance of use permits, variances, building permits, business licenses, or any other entitlement for the establishment or operation of medical marijuana dispensaries within the City to April

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**APPROVED:**

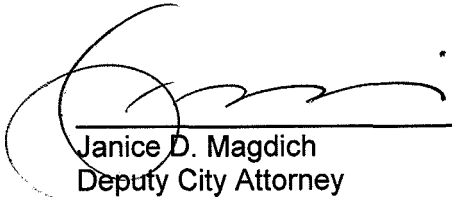
A handwritten signature in black ink, appearing to read "Blair King", written over a horizontal line.

Blair King, City Manager

13, 2011. As previously noted, without the proposed extension, Interim Ordinance 1823 will be of no further force and effect after April 14, 2010.

**FISCAL IMPACT:** None.

**FUNDING:** N/A.



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Janice D. Magdich  
Deputy City Attorney

cc: Rad Bartlam, Community Development Director  
David Main, Police Chief

Attachment: Proposed Uncodified Interim Urgency Ordinance Extending Ordinance No. 1823

ORDINANCE NO. 1828

AN UNCODIFIED INTERIM URGENCY ORDINANCE OF THE  
CITY COUNCIL OF THE CITY OF LODI EXTENDING ORDINANCE  
NO. 1823 IMPOSING A TEMPORARY MORATORIUM ON THE  
ESTABLISHMENT OR OPERATION OF MEDICAL MARIJUANA  
DISPENSARIES IN THE CITY OF LODI

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WHEREAS, in 1996, the voters of the State of California approved Proposition 215, which was codified as Health and Safety Code Section 11362.5, *et seq.* and entitled the Compassionate Use Act of 1996 ("the Act"); and

WHEREAS, the intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to obtain and use it under limited, specified circumstances; and

WHEREAS, on January 1, 2004, Senate Bill 420 became effective to clarify the scope of the Act and to allow cities and counties to adopt and enforce rules and regulations consistent with SB 420 and the Act; and

WHEREAS, under the U.S. Controlled Substances Act, marijuana is classified as a Schedule 1 drug, meaning it has no accepted medical use; and

WHEREAS, the City of Lodi (the "City") has received inquiries from members of the public as to the permitting process and zoning regulations for operating medical marijuana dispensaries within the City; and

WHEREAS, medical marijuana dispensaries raise issues of first impression for the City, which currently does not address or regulate in any manner the existence or location of medical marijuana dispensaries in its Municipal Code; and

WHEREAS, based on recent trends, the City believes that it may receive a growing number of inquiries for such businesses, including an application in the immediate future; and

WHEREAS, other California cities that have permitted the establishment of medical marijuana dispensaries have witnessed an increase in crime, such as burglaries, robberies, and the sale of illegal drugs in the areas immediately surrounding such dispensaries; and

WHEREAS, the City must study and analyze concerns about the potential negative impacts on the public health, safety, and welfare arising from medical marijuana dispensaries, including, but not limited to, criminal incidents, loitering, disturbing the peace, and property damage; and

WHEREAS, the City must study the scope of the City's police power and draft the necessary municipal code provisions; and

WHEREAS, if medical marijuana dispensaries were allowed to be established in the City without appropriate regulation, such uses might be established in areas that

would conflict with the General Plan currently under consideration by the Planning Commission and the City Council, be inconsistent with surrounding uses, or be detrimental to the public health, safety, and welfare; and if such uses were allowed to proceed as allowed under the current zoning, such uses could conflict with, and defeat the purpose of, the proposal to study and adopt new regulations regarding medical marijuana dispensaries; and

WHEREAS, the issuing of permits, business licenses, or other applicable entitlements providing for the establishment and/or operation of medical marijuana dispensaries, prior to the completion of the City's study of the potential impact of such facilities, poses a current and immediate threat to the public health, safety, and welfare, and that a temporary moratorium on the issuance of such permits, licenses, and entitlements is thus necessary; and

WHEREAS, this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and Section 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; it prevents changes in the environment pending the completion of the contemplated General Plan adoption and zoning ordinance review; and

WHEREAS, California Government Code §65858 authorizes cities to adopt moratoriums on land use entitlements in order to study any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal; and

WHEREAS, for the protection of the public's health, safety, and general welfare, the City Council on April 15, 2009, adopted Ordinance No. 1822 entitled an Uncodified Urgency Interim Ordinance of the City Council of the City of Lodi making findings and imposing a forty-five (45) day moratorium on the establishment or operation of medical marijuana dispensaries in the City of Lodi; and

WHEREAS, for the continued protection of the public's health, safety and general welfare, the City Council on May 20, 2009, adopted Ordinance No. 1823 entitled an Uncodified Interim Urgency Ordinance of the City of Lodi Extending Ordinance No. 1822 Imposing a Temporary Moratorium on the Establishment or Operation of Medical Marijuana Dispensaries in the City of Lodi, making findings and imposing an additional moratorium of ten (10) months and fifteen (15) days on the establishment or operation of medical marijuana dispensaries in the City of Lodi; and

WHEREAS, the City Council desires to extend Ordinance No. 1823 for an additional one-year period, as permitted by Government Code Section 65858, to maintain the current status quo and to provide time for the City to study applicable law, a permit or licensing procedure, the appropriate zoning districts for such uses, and adopt regulatory standards and conditions to be imposed on such operations.

NOW, THEREFORE, BE IT ORDAINED BY THE LODI CITY COUNCIL AS FOLLOWS:

Section 1. The City Council finds that in accordance with the terms and provisions of Section 65858 of the Government Code, and following notice given in the time and manner required by law, it held a public hearing on the extension of Ordinance No. 1823 on February 3, 2010. After hearing all applicable evidence, the City Council finds that the conditions and findings cited in Ordinance 1823 continue to exist and that further study by City staff is necessary in order to study applicable law, a permit or licensing procedure, the appropriate zoning districts for such uses, and to adopt regulatory standards and conditions to be imposed on such operations.

Section 2. Imposition of Moratorium.

A. In accordance with Government Code Section 65858, from and after the date of the expiration of Ordinance No. 1823, no use permit, variance, building permit, business license, or other applicable entitlement for use shall be approved or issued for the establishment or operation of a medical marijuana dispensary for an additional one-year period.

B. For purposes of this Ordinance, "medical marijuana dispensary" shall mean any facility or location where a primary caregiver intends to or does make available, sell, transmit, give, or otherwise provide medical marijuana to two or more of the following: a qualified patient, a person with an identification card, or a primary caregiver. For purposes of this ordinance, the terms "primary caregiver," "qualified patient," and "identification card" shall have the same meaning as that set forth in Health and Safety Code Section 11362.7, *et seq.*

C. For purposes of this Ordinance, a medical marijuana dispensary shall not include the following uses, as long as the location of such uses is otherwise regulated by applicable law and as long as such use complies strictly with applicable law, including, but not limited to, Health and Safety Code Section 11362.7, *et seq.*: (1) a clinic, licensed pursuant to Chapter 1, Division 2 of the Health and Safety Code (commencing with §1200); (2) a health care facility, licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code (commencing with §1250); (3) a residential care facility for persons with chronic life-threatening illness, licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code (commencing with §1568.01); (4) a residential care facility for the elderly, licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code (commencing with §1569); or (5) a hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code (commencing with §1725), the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

D. This Ordinance is an urgency ordinance adopted pursuant to the authority granted to the City of Lodi by Government Code Section 65858 and is for the immediate preservation of the public health, safety, and welfare. The City Council of the City of Lodi hereby finds and declares that there is a need to enact an urgency ordinance establishing a moratorium on medical marijuana dispensaries, based upon the following findings:

- (1) California cities that have permitted the establishment of medical marijuana dispensaries have found that such dispensaries have resulted in negative and harmful secondary effects, such as an increase in crime, including robberies, burglaries, and sales of illegal drugs in the areas immediately surrounding medical marijuana dispensaries. This potential for increased risk of crime and violence presents a clear and immediate danger to the public health, safety and welfare of the residents of the City of Lodi; and
- (2) The City has recently received inquiries from members of the public as to the permitting process and zoning regulations for operating medical marijuana dispensaries within the City; and
- (3) The City does not currently have standards in its Municipal Code relating to the location, operation, and concentration of medical marijuana dispensaries within the City; and
- (4) If medical marijuana dispensaries were allowed to be established without appropriate review of location and operational criteria and standards, such uses might be established in areas that would conflict with the General Plan under consideration by the Planning Commission and the City Council, be inconsistent with surrounding uses, or could have potential adverse secondary effects on neighborhoods in the City and be detrimental to the public health, safety, and welfare; and
- (5) The failure to extend the existing moratorium may result in significant irreversible change in the character of the community and the neighborhood surrounding any marijuana dispensary that would be allowed to open under the City's Municipal Code; and
- (6) Permitting a marijuana dispensary to open while the City is studying and considering a new General Plan as well as zoning regulations to regulate and/or prohibit this use would defeat the purpose of studying these impacts in the first place; and
- (7) **As** a result of the negative and harmful secondary effects associated with medical marijuana dispensaries and the current and immediate threat such secondary effects pose to the public health, safety, and welfare, it is necessary to extend the existing moratorium on the establishment and operation of medical marijuana dispensaries in the City for an additional one-year period from and after the date of the expiration of Ordinance No. 1823, to allow for the completion of the City's study of the potential impacts of medical marijuana dispensaries and possible amendments to the City's Municipal Code.

Section 3. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this

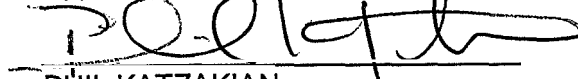
Ordinance or any part thereof. The City Council of the City of Lodi hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective.

Section 4. No Mandatory Duty of Care. This Ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 6. Conflict. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

Section 7. Effective Date. This urgency Ordinance shall be published one time in the "Lodi News Sentinel," a daily newspaper of general circulation printed and published in the City of Lodi, and shall be in force and take effect immediately upon its passage and approval by at least four-fifths vote of the City Council. This urgency Ordinance extends the expiration of Ordinance No. 1823 (April 14, 2010) for an additional one-year period, through April 14, 2011, unless repealed by further action of the City Council as provided by Government Code Section 65858.


Approved this 3<sup>rd</sup> day of February, 2010



PHIL KATZAKIAN

Mayor

ATTEST:

  
RANDI JOHL  
City Clerk

State of California  
County of San Joaquin, ss.

I, Randi Johl, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1828 was adopted as an urgency ordinance at a regular meeting of the City Council of the City of Lodi held February 3, 2010, and was thereafter passed, adopted, and ordered to print by the following vote:

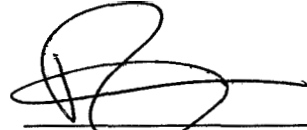
AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, Mounce,  
and Mayor Katzakian

NOES: COUNCIL MEMBERS – None

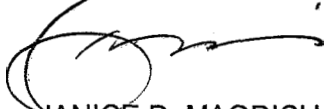
ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None

I further certify that Ordinance No. 1828 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

  
RANDY D. H.

Approved to Form:

  
JANICE D. MAGDICH  
Deputy City Attorney





***Please immediately confirm receipt  
of this fax by calling 333-6702***

CITY OF LODI  
P. O. BOX 3006  
LODI, CALIFORNIA 95241-1910

**ADVERTISING INSTRUCTIONS**

**SUBJECT: PUBLIC HEARING TO CONSIDER EXTENDING INTERIM  
ORDINANCE NO. 1823, AN UNCODIFIED INTERIM URGENCY  
ORDINANCE IMPOSING A TEMPORARY MORATORIUM ON THE  
ESTABLISHMENT OR OPERATION OF MEDICAL MARIJUANA  
DISPENSARIES IN THE CITY OF LODI**

**PUBLISH DATE: SATURDAY, JANUARY 23, 2010**

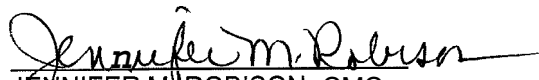
**LEGAL AD**

**TEAR SHEETS WANTED: One (1) please**

**SEND AFFIDAVIT AND BILL TO:** RANDI JOHL, CITY CLERK  
City of Lodi  
P.O. Box 3006  
Lodi, CA 95241-1910

**DATED:** THURSDAY, JANUARY 21, 2010

**ORDERED BY:** RANDI JOHL  
CITY CLERK

  
JENNIFER M. ROBISON, CMC  
ASSISTANT CITY CLERK

\_\_\_\_\_  
MARIA BECERRA  
ADMINISTRATIVE CLERK

**Verify Appearance of this Legal in the Newspaper – Copy to File**

Faxed to the Sentinel at 369-1084 at _____ (time) on _____ (date) _____ (pages)	
LNS _____	Phoned to confirm receipt of all pages at _____ (time) _____ CF _____ MB _____ JMP (initials)



## **DECLARATION OF POSTING**

### **PUBLIC HEARING TO CONSIDER EXTENDING INTERIM ORDINANCE NO. 1823, AN UNCODIFIED INTERIM URGENCY ORDINANCE IMPOSING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT OR OPERATION OF MEDICAL MARIJUANA DISPENSARIES IN THE CITY OF LODI**

On Friday, January 22, 2010, in the City of Lodi, San Joaquin County, California, a copy of a Notice of Public Hearing to consider extending interim Ordinance No. 1823, an uncodified interim urgency ordinance imposing a temporary moratorium on the establishment or operation of medical marijuana dispensaries in the City of Lodi (attached hereto, marked Exhibit "A") was posted at the following four locations:

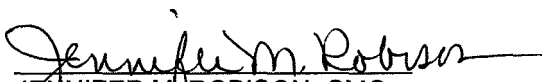
Lodi Public Library  
Lodi City Clerk's Office  
Lodi City Hall Lobby  
Lodi Carnegie Forum

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 22, 2010, at Lodi, California.

ORDERED BY:

**RANDI JOHL**  
**CITY CLERK**

  
JENNIFER M. ROBISON, CMC  
ASSISTANT CITY CLERK

\_\_\_\_\_  
MARIA BECERRA  
ADMINISTRATIVE CLERK



# CITY OF LODI

Carnegie Forum  
305 West Pine Street, Lodi

## NOTICE OF PUBLIC HEARING

Date: February 3, 2010

Time: 7:00 p.m.

For information regarding this notice please contact:

**Randi Johl**

**City Clerk**

**Telephone: (209) 333-6702**

**EXHIBIT A**

### NOTICE OF PUBLIC HEARING

**NOTICE IS HEREBY GIVEN** that on **Wednesday, February 3, 2010**, at the hour of 7:00 p.m., or as soon thereafter as the matter may be heard, the City Council will conduct a public hearing at the Carnegie Forum, 305 West Pine Street, Lodi, to consider the following item:

- a) **Extend interim Ordinance No. 1823, an uncoded interim urgency ordinance imposing a temporary moratorium on the establishment or operation of medical marijuana dispensaries in the City of Lodi.**

Information regarding this item may be obtained in the City Attorney's Office, 221 West Pine Street, Lodi, (209) 333-6701. All interested persons are invited to present their views and comments on this matter. Written statements may be filed with the City Clerk, City Hall, 221 West Pine Street, 2<sup>nd</sup> Floor, Lodi, 95240, at any time prior to the hearing scheduled herein, and oral statements may be made at said hearing.

If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the City Clerk, 221 West Pine Street, at or prior to the close of the public hearing.

By Order of the Lodi City Council:

Randi Johl  
City Clerk

**Dated: January 20, 2010**

Approved as to form:

D. Stephen Schwabauer  
City Attorney